

Date of Decision: 4-3-96
corr

Special Civil Applications Nos.4565,4567, 4575,
4577. 4578 and 4580 of 1995

For Approval and Signature:

HONOURABLE MR. JUSTICE M.R. CALLA

1. Whether Reporters of Local Papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether Their Lordships wish to see the fair copy of the judgment? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any other order made thereunder? Yes
5. Whether it is to be circulated to the Civil Judge? No

Special Civil Applications Nos.4565, 4567,4575, 4577,
4578 and 4580 of 1995

Mr. D.A.bambhania, learned Addl.G.P. for the petitioners.
Ms. Sangita Pahwa,learned counsel for the respondents-workmen.

Coram: (M.R. Calla, J.)

Date ; 4-3-96

COMMON ORAL JUDGMENT ;

1. All these six petitions are based on identical facts, involving common questions of law and are directed against the common order dated 4-4-94 passed in Recovery Applications No.656/92 to 661/92 by the Labour Court, Surendranagar and hence the same are decided by this

common Judgment and order.

2. The respondents-workmen were working with the Deputy Conservator of Forest, Surendranagar under Forest and Environment Department of the Government of Gujarat. The services of the respondent-Manubhai Mavjibhai were terminated on 6-9-83. An industrial dispute being raised by him, the Award granting relief of reinstatement with 100% backwages was passed in his favour on 1-12-86 by Labour Court, Surendranagar. Out of the other five respondents-workmen, the services of the three respondents-workmen, namely, Labhubhai Mohanbhai, Kanjibhai Navjibhai and Valjibhai Maganbhai were terminated on 14-7-83 and on industrial dispute being raised, an Award was passed in their favour on 23-11-90 granting relief of reinstatement with 50% backwages and in case of the respondents-workmen Gordhanbhai Maganbhai and Hemubhai Velabhai their services were terminated on 4-8-83 and the Award was passed on 23-11-90 granting relief of reinstatement with 50% backwages.

3. On 17-10-88 a Government Resolution was issued by the Roads & Buildings Department of the Government of Gujarat. The contents of this Government Resolution dated 17-10-88 (as per the copy which has been placed on record subsequently by Mr. Bambhania) are reproduced as under:

On the basis of this Government Resolution dated 17-10-88 Applications under Section 33-C(2) of the Industrial Disputes Act, 1947 (herein-after referred to as 'the Act') were moved by the respective respondents before the Labour Court, Surendranagar enforcing the recovery of the amount claimed under this Resolution dated 17-10-88. These Applications were allowed by a common order dated 4-4-94 awarding specific amounts mentioned against the name of each of the six respondents-workmen in the operative part of the order dated 4-4-94 passed by the Labour Court at Surendranagar in Recovery Applications Nos.656 to 661 of 1992. The amount awarded to each of the six respondents-workmen by this order dated 4-4-94 is as under:

Against this order dated 4-4-94 passed by the Labour Court at Surendranagar the State of Gujarat has preferred

these six Special Civil Applications. During the pendency of the matters, applications seeking amendment were filed on behalf of the petitioners and the same have been allowed.

4. Mr. Bambhania, the learned Addl. G.P., has submitted that the respondents-workmen are the employees of the Forest Department whereas the Government Resolution dated 17-10-88 is a Resolution issued by the Roads & Buildings Department of the Government of Gujarat and no employee of the Forest Department can get any benefits of this Resolution issued by the Roads & Buildings Department. He has further mentioned that in this Government Resolution, the reference has been made to the Forest Department, but it only means that those employees of the Roads & Buildings Department, who are engaged in the repair and maintenance works in other Departments, including the Forest Department, shall only be entitled and no other employees of the other Departments. To be more specific, the employees working in the other Departments in any work other than repairs and maintenance will not be entitled. Thus the entitlement of the present respondents-workmen on the basis of this Government Resolution dated 17-10-88 is disputed by the petitioners and it has been argued by Mr. Bambhania that no claim under this Government Resolution dated 17-10-88 could be enforced by the present respondents-workmen by moving Recovery Applications under Section 33-C(2) of the Act because it is not a pre-determined or pre-existing claim and in want of a pre-determined or pre-existing claim there is no question of enforcing the Recovery under Section 33-C(2) and he has placed reliance on a decision of the Supreme Court reported in 1994 SCW 5000 (Municipal Corporation of Delhi v. Ganesh Razak and another). It has been further argued by Mr. Bambhania on behalf of the petitioners-State of Gujarat that the impugned order dated 4-4-94 passed by the Labour Court at Surendranagar is without jurisdiction as the Labour Court could not have gone into this matter under Section 33-C(2) and in no case the Labour Court could have passed an order for 100% backwages in case of the respondents other than Manubhai Mavjibhai because in his case the Award for reinstatement with 50% backwages was passed on 23-11-90 and even if the applicability of the Government Resolution dated 17-10-88 is conceded in favour of the 5 respondents-workmen, without admitting the same, they could not be granted 100% backwages for the period from 1-10-88 till the date of the Award i.e. 23-11-90 and for this period i.e. from 1-10-88 to 23-11-90 these five respondents-workmen other than Manubhai Mavjibhai should have been paid only 50% of the

claim under the Government Resolution dated 17-10-88 whereas even in favour of these five respondents the wages for the period from 1-10-88 to 23-11-90 has been awarded as if they were entitled to 100% backwages instead of 50% backwages as was granted by the Labour Court, Surendranagar in the Award dated 23-11-90.

5. As against it, Ms. Pahwa appearing on behalf of the respondents-workmen has submitted that the Government Resolution dated 17-10-88 is fully applicable to the similarly situated employees of the Forest Department whether they are working in the repairs and maintenance department or any where as the order clearly refers to the Forest Department and since the Government Resolution itself has granted the benefits of this Resolution to the employees working in Forest Department on daily wages, the respondents-workmen, who fulfilled all the requirements, as mentioned in this Government Resolution dated 17-10-88, are entitled to get the full benefits of this Resolution and when their claim is established by the Resolution itself, there is no scope of now making the interpretation by the petitioners in their own favour so as to deny or dispute a honest and just claim of the workmen. She has further submitted that similar claims had come up for consideration before the Division Bench in Special Civil Application No.3987 of 1989 wherein an order was passed on 31-8-89 by the Division Bench as under:

' IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.3987 OF 1989

Shri Haribhai Somabhai
and others.

Petitioners

Versus

State of Gujarat
and others.

Respondents

Mr.P.H. Pathak, Advocate for petitioners.

COURT'S ORDER ;

"Having heard the learned advocates of both the sides an interim relief, we have come to the conclusion that the benefits of Government G.R. Annexure "E" are made available to employees daily wages in Forest

Department amongst other as it is expressly mentioned therein consequently there is no reason why the daily wagers working in the Forest Department should not be given benefits of the said G.R. We, therefore, grant interim relief in terms of para (c) if the concerned employees satisfy the requirements of the said G.R. qua them."

Date: 31.8.89

Sd/- (S.B. Majmudar, J)

Sd/- (J.U. Mehta, J)'

Ms. Pahwa has further invited my attention to a common order passed in Special Civil Applications Nos. 1531 to 1539 of 1994 on 16-8-94. The contents of which are reproduced as under:

'SPECIAL CIVIL APPLICATION NO. 1531 OF 1994

TO

SPECIAL CIVIL APPLICATION NO. 1539 OF 1994

CORAM: B.J. SHETHNA, J

16/8/1994

Common Order :-

Mr. Desai, learned Asstt. Government Pleader for the petitioner prays for time on the ground that he could not trace out case papers and hence these matters may be adjourned. Board was prepared well in advance. Therefore, there is no question of granting any time. Going through the order passed by the Labour Court, no fault can be found with the interim orders. This court cannot interfere with this finding in a petition under Article 227 of the Constitution of India and hence all these petitions are dismissed.

Dt: 16/8/94'

However, on facts Ms. Pahwa was not able to explain as to how the respondents other than Manubhai Mavjibhai could get 100% advantage of the Resolution dated 17-10-88 for the period from 1-10-88 to 23-11-90.

6. I have heard learned counsel for both the sides. So far as the Government Resolution dated 17-10-88 is concerned there is no doubt that it has been issued by

Public Works Department and while making reference to the Departments, it has been mentioned that it deals with the employees of the other Departments including the Forest Department and a reference has also been made to the purpose of maintenance and repairs and after setting out the names of the various Departments including the Forest Department and after referring to the construction work, repairs, maintenance etc., in the background in which the Resolution has been passed, it appears to have been resolved that the employees, who have been working under various Departments for a period of more than 5 years and less than 10 years as daily wagers, shall be getting Rs.750/- fixed alongwith other allowances. The Recovery Applications were not based on the Awards which were passed granting relief of reinstatement and backwages i.e. Award dated 1-12-86 in case of Manubhai Mavjibhai and the Awards dated 23-11-90 in case of other five respondents, but the Recovery Applications under S.33-C(2) are based on the Government Resolution dated 17-10-88. The relevance of the award was only for the purpose of counting the length of service required in the resolution dated 17-10-88 and computing the backwages for the period from 1-10-88 to 23-11-90 so as to give effect to the G.R. dated 17-10-88. There is no dispute that the petitioners-State of Gujarat has raised a dispute with regard to the entitlement of the present respondents-workmen under this Resolution dated 17-10-88 and on that basis the jurisdiction of the Labour Court to entertain the grievance of this nature under S.33-C(2) has also been challenged. But in such cases, if the claim of the workman is disputed, the dispute has to be a genuine dispute based on a fact situation and merely because an illusory dispute is raised, the Labour Court can not be precluded from exercising its powers under S.33-C(2) of the Act. The only basis on which the entitlement is denied or disputed is the mention of the words 'construction, repairs and maintenance' and further that the Government Resolution dated 17-10-88 has been issued by the Roads & Buildings Department. Even if the Government Resolution dated 17-10-88 has been issued by the Roads & Buildings Department, a reading of this Resolution makes it clear that it is based on a Report made by a Committee and on the basis of the Report made by a Committee, a conscience decision has been taken by the Government when it is stated at the very threshold of the Resolution that,

and then it is stated that accordingly the daily wagers working under the various Departments under the Government will be entitled to the benefits mentioned in the paragraphs to follow in the body of the Resolution

itself, which has been quoted in extenso in the earlier part of this order. Besides this, the Division Bench has passed the order on 31-8-89 in Special Civil Application No.3987 of 1989 after hearing both the sides, ofcourse on the question of interim relief, that it had come to the conclusion that the benefits of the Government Resolution Annexure 'E' (the same Resolution dated 17-10-88, which is under consideration in these cases, was Annexure 'E' in the Special Civil Application No.3987 of 1989) are made available to employees on daily wages in Forest Department amongst others as it has been expressly mentioned therein. Consequently there is no reason why the daily wagers working in the Forest Department should not be given benefits of the said Government Resolution and on that basis, the interim relief was granted to those employees, who satisfy the requirements under the said Government Resolution qua them. There is yet another order passed by the Single Bench of this Court on 16-8-94 as a common order in Special Civil Applications Nos.1531 to 1539 of 1994 and it has been mentioned therein that after going through the order passed by the Labour Court, no fault could be found and the Court can not interfere with the finding in a petition under Article 227 of the Constitution of India and all the petitions filed by the State of Gujarat were dismissed. Mr. Bambhania submitted that in this order 'no fault could be found' has been mentioned for the interim orders. It has been clarified in this regard by Ms. Pahwa that there was no interim order under challenge in this set of Special Civil Applications Nos.1531 to 1539 of 1994. They were all directed against the order passed by the Labour Court in Recovery Applications under Section 33-C(2) on the basis of the Government Resolution dated 17-10-88 issued by the Roads & Buildings Department and it appears to be a case of typographical error only inasmuch as instead of using the words impugned orders it has been typed as interim orders. Mr.Bambhania further argued in this regard that the Assistant Government Pleader had sought time before the Bench which passed order on 16-8-94 in the above mentioned set of Special Civil Applications Nos.1531 to 1539 of 1994 because he had not been able to trace out the case papers. This argument of Mr. Bambhania is factually correct, but the final order dated 16-8-94 had not been passed merely because the adjournment was sought by the Assistant Government Pleader, but it has been clearly observed that after going through the order passed by the Labour Court, no fault could be found with the order under challenge passed by the Labour Court and the Court, therefore, declined to interfere. Therefore, basically the Court was of the view that no fault could be found with the

order under Challenge and that such a grievance that the time was not granted by the Bench while passing the Order dated 16-8-94 is of no consequence. So far as the case of Municipal Corporation of Delhi v. Ganesh Razak and another (Supra) is concerned, there cannot be any quarrel with the proposition of law that the dispute relating to entitlement is outside the scope of the jurisdiction of the Labour Court under S.33-C(2) and in case there is no prior adjudication or recognition by the employer, the workman can not invoke Section 33-C(2). In the aforesaid case of Municipal Corporation of Delhi v. Ganesh Razak and another (Supra) the Supreme Court was dealing with the case in which the respondents were daily rated casual workers of the Municipal Corporation and their claim was that they were doing the same kind of work as the regular employees and, therefore, they were required to be paid the same pay as the regular employees on the principle of equal pay for equal work. The Supreme Court came to the conclusion that the claim of the respondents-workmen to be paid wages at the same rate as the regular workers had not been earlier settled by adjudication or recognition by the employer without which the stage of computation of the benefits could not reach and as such there could be no occasion for the computation of the benefits on that basis to attract Section 33-C(2) and the mere fact that some other workmen are alleged to have made a similar claim by filing writ petitions under Article 32 of the Constitution was indicative of the need for adjudication of the claim of entitlement to the benefit before computation of such a benefit could be sought. Such are not the facts of the case at hand. Here is a case in which a Government Resolution has been issued and on the basis of that Resolution, the claim was sought to be enforced. In the Resolution dated 17-10-88 when the reference to the daily wagers working in various Departments has been made and in the preamble of the Resolution there is a specific mention about the Forest Department, it can be taken to be a case of recognition of such claim by the employer so as to make it a matter capable of being dealt with under S.33-C(2) and hence the case of Municipal Corporation of Delhi (Supra) decided by the Supreme Court, which has been relied upon by the learned Addl. G.P., can not be of any avail to him in the facts and circumstances of the case at hand. Moreover, in view of the order dated 31-8-89 passed by the Division Bench and the order dated 16-8-94 passed by the Single Bench as a common order, to which reference has already been made herein-above i.e. the earlier part of the order, I find it difficult to take a contrary view so as to deny or to hold that the employees of the Forest Department like the respondents are not covered by this

Government Resolution dated 17-10-88 or that this Resolution is not a recognition by the employer so as to enable them to invoke the provisions of Section 33-C(2) for the purpose of enforcing their claims under the aforesaid Resolution dated 17-10-88.

7. However, the matter does not end here. So far as respondent - Manubhai Mavjibhai in Special Civil Application No.4577 of 1995 is concerned, the Award reinstating him with 100% backwages was passed on 1-12-86 and the Resolution dated 17-10-88 was passed later on and, therefore, so far as Manubhai Mavjibhai-the respondent-workman is concerned, there can not be any dispute and he is entitled to full benefits of this Resolution dated 17-10-88. Regarding the other five respondents-workmen, namely, Kanjibhai Mavjibhai, Gordhanbhai Maganbhai, Hemubhai Velabhai, Valjibhai Maganbhai and Labhubhai Mohanbhai, the Award was passed on 23-11-90 with a relief of reinstatement and 50% backwages and, therefore, while granting the benefit of the Government Resolution dated 17-10-88, such benefits had to be proportionately reduced to 50% in their cases by the Labour Court while deciding their applications under Section 33-C(2) and the submission of Mr. Bambhania that despite the Labour Court's original Award granting them 50% backwages, while passing the orders under Section 33-C(2) the Labour Court has given 100% benefits of the Government Resolution dated 17-10-88 has not been factually contested and Ms. Pahwa appearing on behalf of these five respondents-workmen could not meet this argument as to why 100% benefits of this Resolution have been given by the Labour Court to these five respondents-workmen while deciding their Applications under Section 33-C(2) for the period from 1-10-88 to 23-11-90. On facts relating to these five respondents-workmen I find that the Labour Court while deciding the Applications of these five respondents should not have been oblivious of the terms under which the original Award dated 23-11-90 had been passed and, therefore, 100% benefits in relation to the backwages should not have been given to these five respondents-workmen for the period from 1-10-88 to 23-11-90 and the amount, which has been directed to be paid to them, has to be proportionately reduced to the extent of 50% benefit of the Government Resolution dated 17-10-88 for the period from 1-10-88 to 23-11-90 only and to that extent the impugned order deserves to be modified.

8. The upshot of the aforesaid discussion is that:-

(i) The Special Civil Application No.4577 of 1995 filed against Manubhai Mavjibhai fails in toto and the same is hereby dismissed and the Rule is hereby discharged with no order as to costs. (ii) The other five petitions i.e. Special Civil Applications Nos.4565,4567, 4575, 4578 and 4580 of 1995 are partly allowed to the extent that the impugned order dated 4-4-94 in the cases of Kanjibhai Mavjibhai, Gordhanbhai Maganbhai, Hemubhai Velabhai, Labhubhai Mohanbhai and Valjibhai Maganbhai shall stand modified to the extent of reducing the amount by 50% with reference to the benefits to be computed on the basis of the Government Resolution dated 17-10-88 for the period from 1-10-88 (the date from which the Resolution dated 17-10-88 was made effective) to 23-11-90. Rule is made absolute in these five petitions in the terms as aforesaid with no order as to costs.